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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ALASKA

10 ROBERT H. WOLCOFF and HEATHER)
11 WOLCOFF,)

12 Plaintiffs,)

13 vs.)

14 UNITED STATES OF AMERICA, and)
15 ANNE MARIE YOST,)

16 Defendants.)

Case No. 3:08-CV-00032 (JWS)

17
18 **PLAINTIFFS' FIRST AMENDED COMPLAINT**

19 **INTRODUCTION**

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21 1. In 2005, Robert Wolcuff ("Mr. Wolcuff") sought care for back pain at the
22 Alaska Native Medical Center, an agent of the United States of America. Mr. Wolcuff
23 received numerous back surgeries which were complicated by infection and required
24 additional surgeries.
25

1 The care Mr. Wolcuff received at the Alaska Native Medical Center fell below the
2 relevant medical standard of care and constitutes medical malpractice. Mr. Wolcuff and
3 his wife Heather ("Mrs. Wolcuff") were both harmed by the care Mr. Wolcuff received.

4 JURISDICTION AND VENUE

5 2. Plaintiffs hereby reallege the allegations contained in paragraph 1 of this
6 Complaint as though fully set forth herein.

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8 3. This action against the United States of America arises under the Federal
9 Tort Claims Act, 28 U.S.C. §§ 2671 et seq.

10 4. Plaintiffs timely filed Tort Claims Act administrative claims to the United
11 States Department of Health and Human Services. The United States did not respond to
12 the administrative claims within six months, so the claims are deemed denied. All
13 conditions precedent to a Federal Tort Claims Act action have been met.

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15 5. This Court has jurisdiction under, and by virtue of, 28 U.S.C. § 1346(b).

16 6. Venue is founded in this judicial district based on 28 U.S.C. §§ 1391(e) and
17 1402(b), as the acts complained of occurred in this district.

18 PARTIES

19 7. Plaintiffs hereby reallege the allegations contained in paragraphs 1 through
20 6 of this Complaint as though fully set forth herein.

21
22 8. Plaintiff, Robert Wolcuff, is a United States citizen and resident of the state
23 of Alaska.

9. Plaintiff, Heather Wolcoff, is a United States citizen and resident of the state of Alaska.

10. Defendant, the United States of America, has waived sovereign immunity, pursuant to the Federal Tort Claims Act.

11. Defendant, Anne Marie Yost, is, upon information and belief, a United States citizen and is currently not an Alaska resident

FACTS

12. Plaintiffs hereby reallege the allegations contained in paragraphs 1 through 11 of this complaint as though fully set forth herein.

13. In 2005, Robert Wolcoff was experiencing pain in his back, hip, and leg. Mr. Wolcoff was subsequently diagnosed with a disc herniation and underwent his first back surgery at Alaska Native Medical Center on June 22, 2005.

14. In total, Mr. Wolcuff underwent five separate surgical procedures at Alaska Native Medical Center. The first procedure, referenced above, was a lumbar surgery that involved a foraminal decompression and laminectomy. There was little improvement in Mr. Wolcuff's symptoms and two repeat lumbar surgeries were performed by a different surgeon.

15. During the course of those repeat surgeries, Mr. Wolcöff's post-operative wound became infected. Two additional surgeries were then necessary to drain and debride the post-operative wound. Several months later a spinal cord stimulator was placed to assist with pain control.

Count II

23. Plaintiffs hereby reallege the allegations contained in paragraphs 1 through 22 of this complaint as though fully set forth herein.

24. Defendant United States of America never disclosed, and in fact concealed its purported position that defendant Anne Marie Yost was not an employee of defendant United States of America but was instead an independent contractor.

25. Plaintiff's discovered this position on the part of the United States of America through its answer which was filed in response to plaintiffs' initial complaint herein.

26. At all times relevant to this action, defendant Anne Marie Yost was either an actual or apparent agent of the defendant United States of America, acting within the course and scope of her authority as an apparent or actual agent.

27. In providing medical services, the Defendants and each of them owed plaintiffs a duty of care.

28. The care provided by Defendants and each of them was below the applicable professional, medical standard of care.

29. As a result of the inadequate care Mr. Wolcuff received, he suffered both economic and non-economic damages as described above.

30. As a result of the inadequate care Mr. Wolcuff received, Mrs. Wolcuff suffered both economic and non-economic damages.

Count III

31. Plaintiffs hereby reallege the allegations contained in paragraphs 1 through 30 of this complaint as though fully set forth herein.

32. To the extent, if any, that defendant Anne Marie Yost was an independent contractor for the defendant United States of America, the defendant United States of America retained such control over her conduct so as to be responsible for any damages caused by her failure to meet the applicable professional, medical standard of care.

33. The Defendants and each of them provided medical care to Mr. Wolcuff that was below the applicable professional, medical standard of care.

34. As a result of the above-described inadequate care, Mr. and Mrs. Wolcuff suffered both economic and non-economic damages as described above.

Count IV

35. Plaintiffs hereby reallege the allegations contained in paragraphs 1 through 34 of this complaint as though fully set forth herein.

36. In providing health care to plaintiff Robert Wolcuff as described above, Defendants and each of them owed plaintiffs a duty of care.

37. The care Defendants and each of them provided to Mr. Wolcuff was below the applicable professional, medical standard of care.

38. As result of the inadequate care Mr. Wolcuff received, both he and Mrs. Wolcuff suffered economic and non-economic damages as described above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

A. For a judgment against Defendants jointly and severally in an amount of Two Million Ninety-Four Thousand Four Hundred Thirty-One Dollars (\$2,094,431) as to Mr. Wolcuff;

B. For a judgment against Defendant jointly and severally in an amount of Four Hundred Thousand Dollars (\$400,000) as to Mrs. Wolcuff;

C. For an award, to the extent allowed under applicable law, of Plaintiffs' attorneys' fees and costs in prosecuting this action;

D. For pre- and post-judgment interest; and

E. For such other and further relief as the Court deems just and reasonable.

DATED at Anchorage, Alaska this 30th day of March 2009.

EIDE & GINGRAS, P.C.
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Certificate of Service

I hereby certify that on March 30, 2009, a copy of the foregoing document was served electronically on Daniel R. Cooper Jr., Esq.

s/Thomas S. Gingras